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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

OCT - 4 1996

*Federal Communications Commission
Office of Secretary*

In the Matter of:

Interconnection and Resale Obligations
Pertaining to
Commercial Mobile Radio Services

CC Docket No. 94-54

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COMMENTS OF 360° COMMUNICATIONS COMPANY

360° Communications Company (360°)¹ respectfully submits its comments in response to the Commission's Third Notice of Proposed Rulemaking in the above-captioned proceeding² released August 13, 1996. As detailed below, although 360° supports the Commission's goals of promoting competition in the wireless market, it strongly discourages any Commission regulation of automatic roaming; instead, the Commission should continue to rely on market forces, rather than regulatory requirements, to shape the development of the wireless industry.

I. INTRODUCTION AND SUMMARY

In the *Third Notice*, the Commission seeks comment on a number of issues concerning the offering of automatic roaming services by CMRS providers. Specifically, the Commission asks commenters to address whether "it would serve the public interest to adopt rules governing the provision of automatic roaming service by CMRS providers to

¹ 360° is the second largest publicly traded wireless communications company in the United States, providing wireless voice and data services to more than 1.75 million customers in nearly 100 markets across 14 states.

² FCC 96-284 (released August 13, 1996) (Second Report and Order and Third Notice of Proposed Rulemaking). The Second Report and Order portion of the document shall be referred to as *Second Report and Order* and the Third Notice of Proposed Rulemaking shall be referred to as *Third Notice*.

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other CMRS providers . . .³ 360° respectfully submits that the Commission should leave automatic roaming issues to the open market. First of all, the current roaming situation among incumbent providers proves that non-regulated, market-based roaming arrangements work. Second, incumbent carriers have a revenue incentive to negotiate with new PCS operators, provided that such negotiations are market-driven and allow for differentiation of services, that all necessary steps are taken to protect incumbent carriers against fraud, and that no additional costs will be imposed on incumbent providers.

II. THE COMMISSION MUST LEAVE ROAMING ARRANGEMENTS TO MARKET FORCES

360° strongly urges the Commission to refrain from adopting federal regulatory requirements governing automatic roaming arrangements among CMRS operators, and recommends that the Commission rely instead on market forces as the mechanism for facilitating automatic roaming between CMRS carriers. The explosive growth of the wireless industry illustrates how well market forces drive competition, ensuring that consumers benefit from the newest technology at the lowest prices. The Commission wisely chose not to mandate automatic roaming among cellular providers, and the results -- widespread automatic roaming, record-breaking growth, enhanced technology, and competitive prices -- prove that this decision was in the public interest.

Significantly, the Commission explained that its objective in this proceeding is "to further the goals and requirements of the Communications Act of 1934, as amended, including the charge recently given to us by Congress to promote competition and reduce regulation in order to secure lower prices and high quality services for American telecommunications consumers and encourage the rapid deployment of new

³ *Third Notice*, ¶ 17.

telecommunications technologies."⁴ Consistent with the deregulatory goals shared by Congress and the Commission, 360° urges the Commission to allow market forces to govern the development of automatic roaming in the CMRS marketplace.

III. INCUMBENT CARRIERS, SUCH AS 360°, HAVE A REVENUE INCENTIVE TO NEGOTIATE WITH NEW CMRS ENTRANTS

Moreover, 360° submits that regulatory requirements governing automatic roaming arrangements are unnecessary because incumbent CMRS providers have a strong economic incentive to negotiate automatic roaming agreements with new entrants. As the Commission correctly observes, "roaming capability is widely available to cellular subscribers, is highly valued by those subscribers, and is one of the industry's fastest growing sources of revenue."⁵ Thus, it is evident that incumbent carriers have a revenue incentive to negotiate with new CMRS entrants. 360° notes the Commission's caution with regard to whether there are anti-competitive reasons that might discourage the negotiation of roaming arrangements with new entrants; however, as the Commission correctly suggests, "there is no specific evidence in the record of unreasonable discrimination against the PCS licensees concerning the provision of roaming. To the contrary, there is evidence that some PCS providers believe they will be able to negotiate roaming agreements successfully without an automatic roaming rule."⁶ 360° submits that the evidence in the record indicates that automatic roaming will evolve effectively without federal regulatory intervention, and urges the Commission not to impose unnecessary regulations that are unsupported by the record.

⁴ *Id.*, ¶ 1.

⁵ *Id.*, ¶ 11.

⁶ *Id.*, ¶ 20.

IV. ROAMING AGREEMENTS MUST BE ALLOWED TO BE NEGOTIATED IN THE OPEN MARKET WITHOUT REGULATIONS

360° is willing to negotiate automatic roaming agreements with new CMRS entrants in the same manner that it currently negotiates roaming arrangements -- in an open market, allowing for differentiation of services, with fraud protection, and without the imposition of unnecessary costs. There are many factors that affect the negotiation of roaming agreements, including factors such as geography, amount and balance of traffic, deliverable customers, and technical feasibility (*i.e.*, a-side/b-side distinctions), among others. If carriers are free to negotiate automatic roaming arrangements without federal regulatory intervention, they can negotiate acceptable terms that adequately account for each of these considerations.

In addition, 360° strongly agrees with the Commission's recognition that "roaming regulations may impose significant costs and burdens on CMRS providers and that we should narrowly tailor our actions to avoid placing an undue burden on such providers."⁷ In order to ensure that the Commission's actions do not result in the imposition of any undue burdens on roamed-upon, incumbent providers, the Commission should refrain from imposing mandatory regulations and instead, ensure that negotiations remain market driven and subject to the factors referenced above. For example, to avoid exposure to losses due to fraud, roamed-upon operators must be able to negotiate terms and conditions that will ensure that new entrants are responsible for all charges associated with the use of their numbers on another carrier's system, including any fraud that may occur. Incumbent carriers currently negotiate such arrangements with other CMRS incumbents and must also be able to negotiate fraud protection measures with new entrants.

⁷ *Id.*, ¶ 11.

Similarly, just as incumbent carriers must deploy adequate fraud protection measures, so too must new entrants. New entrants, like incumbent providers, must be capable of deploying an intersystem validation system compatible with IS41 in order to discourage fraud within the service area. This should occur independently of the new entrant's willingness to pay for fraudulent use of its numbers in the incumbent carrier's service area.

Finally, to ensure roamed-upon incumbent providers are not unduly burdened, the new entrant must assume any additional costs that may be incurred to allow the technical feasibility of roaming between the carriers' systems. This is crucial due to the fact that, as soon as new entrants complete the build-out of their own systems, they are unlikely to continue to need roaming service from incumbent providers. If the roamed-upon, incumbent operator bore the responsibility for making the systems technically compatible, that operator would face a significant stranded investment after the new entrant no longer required roaming capabilities. Requiring the incumbent to bear these costs would constitute an unfair taking of the incumbent providers' property and greatly discourage any incentive to provide roaming capability.

Thus, automatic roaming requirements are not necessary because there is adequate incentive and willingness to ensure the negotiation of automatic roaming agreements between CMRS carriers, provided that market factors are in place to ensure that such arrangements do not unduly burden incumbent providers.

V. THE COMMISSION SHOULD SUNSET THE MANUAL ROAMING RULE

360° agrees with the Commission's determination that "once broadband PCS providers' buildout periods are completed, sufficient wireless capacity will be available in the market and, as a result, any roaming regulations, whether manual or automatic, likely

will become superfluous."⁸ As a result, any rules mandating such requirements would be unnecessary and should be eliminated. In addition, a sunset rule will encourage facilities-based build-out, which is in line with the Commission's current policies and is in the public interest. Accordingly, 360° supports elimination of the manual roaming rule five years after the last group of initial licenses for currently allocated broadband PCS spectrum is awarded.

VI. CONCLUSION

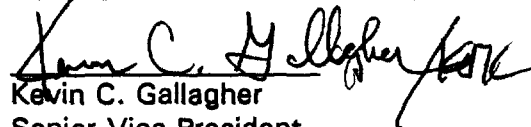
360° supports the Commission's ongoing effort to promote competition within the wireless industry. As outlined above, 360° does not, however, believe that the adoption of rules governing automatic roaming between CMRS carriers will promote this objective. 360° submits that market forces are fully sufficient to ensure that automatic roaming capability is made available to emerging CMRS operators, thus allowing these providers to reach their full competitive potential. 360°, along with other incumbent providers, has a strong economic incentive to negotiate automatic roaming arrangements with new CMRS entrants, as long as the negotiations are subject to the same market-based factors as current negotiations between existing carriers. In 360°'s view, the history of explosive growth within the wireless industry and the widespread availability of automatic roaming without regulatory intervention more than adequately illustrates that a deregulatory environment will promote competition, encourage market-based negotiations, lead to

⁸ *Id.*, ¶ 32.

technical innovation, and reduce prices, all of which greatly benefit consumers and are in the public interest.

Respectfully submitted,

360° COMMUNICATIONS COMPANY

A handwritten signature in black ink, appearing to read "Kevin C. Gallagher", is written over a horizontal line.

Kevin C. Gallagher

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